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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

AL FRIEDMAN, *Petitioner,*

v.

INTERNATIONAL ASSOCIATION OF MACHINISTS, ET AL.
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF OF RESPONDENTS IN OPPOSITION

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OPINIONS BELOW

The opinion of the District Court (App. A of Petition, pages 33-42) is reported at 147 F. Supp. 1. The opinion of the Court of Appeals for the District of Columbia Circuit (App. A of Petition, pages 23-31) is reported at 252 F. 2d 846.

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition. However the Court of Appeals order denying rehearing was entered on March 17, 1958 (R. 280) rather than on April 15, 1958 as stated in the petition.

QUESTIONS PRESENTED

In the opinion of respondents, the questions presented by the petition are:

1. Did the Constitution of the International Association of Machinists, which authorizes an appeal to its International President "from the decision of any local lodge" and confers power on him to enforce the laws of the Association and to expel any member guilty of joining or participating in any dual organization, of which the Communist Party is one, lawfully permit the International President to entertain an appeal from the decision of petitioner's local lodge acquitting petitioner of charges of membership in the Communist Party and of advocating and encouraging Communism, and upon the basis of evidence in the appeal record which the courts below found sufficient to sustain the charges, order petitioner's expulsion from membership in the Association?

2. Should petitioner's expulsion be invalidated by judicial action based upon a claim of insufficient opportunity to be heard before the appellate tribunals of the Association when (a) he filed a written opposition to the appeal before the International President and did not ask for an oral hearing, (b) he was given an opportunity to present further evidence before the Executive Council of the organization, which he did

not use, (c) he was given the privilege of filing through counsel a written brief to the Executive Council and did so, (d) he was given an oral hearing before the Appeals and Grievance Committee of the Convention of the organization, and (e) petitioner's claims were not made to the Association or in his complaint in District Court, but were set forth for the first time nearly four years after the events in a motion for summary judgment?

STATUTES AND REGULATIONS INVOLVED

The petition correctly states that there are no Federal or State statutes or regulations involved.

STATEMENT

This litigation concerns the validity of action of the International Association of Machinists (hereinafter called the "Association") in expelling petitioner from membership in the Association for communist activity and membership in the Communist Party (R. 6).

In March, 1952, written charges were filed against petitioner in his local lodge in St. Louis, Missouri, alleging that he was in violation of the governing laws of the Association by advocating, encouraging and supporting Communism and by being a member of the Communist Party (R. 7). Such activity had been proscribed by the Convention of the Association as early as 1925, and the Executive Council of the organization had twice issued official circulars to the membership advising that violation of this rule subjected a member to expulsion. (R. 189-194)

A full evidentiary hearing was held on the charges against petitioner before a trial committee of the local lodge in accordance with the laws of the Association

(R. 89-165). The evidence directly linking petitioner with the Communist Party and communist activity included (1) testimony by a former official of the Communist Party in St. Louis that he issued petitioner party membership card number 94663 and that petitioner was a "trusted, respected leading member" of the party in the St. Louis area (R. 96, 97, 139); (2) testimony that petitioner acknowledged membership in the Communist Party and communist activity dating back to 1939 (R. 91, 92); (3) testimony by members of the Association that petitioner had made efforts to recruit them into membership in the party (R. 99, 110); (4) a photostat of petitioner's membership card in the Tom Paine Club, a communist front group, (R. 93, 99, 165); (5) testimony by an eyewitness as to petitioner's presence and participation in meetings of the Communist Party at its St. Louis headquarters (R. 98, 142-145); testimony by participants of meetings conducted by petitioner, some of them in his home, for the purpose of propogandizing members of the Association and indoctrinating them with Communist philosophy. (R. 99, 100, 104, 105-113); (6) testimony that petitioner resigned as president of his local lodge rather than sign the non-communist affidavit required by law (R. 93). Such evidence was direct non hearsay testimony by witnesses who confronted petitioner with full opportunity for him to cross examine, deny, or refute. Although petitioner formally pleaded not guilty to the charges against him (R. 90), he did not deny or attempt to rebut the specific items of testimony linking him with the Communist Party. (R. 149-152, 158-162). Both the District Court and the Court of Appeals found that the evidence was sufficient to support the charges against petitioner. (R. 243, 262).

In spite of the evidence, the trial committee of petitioner's local lodge recommended to the lodge that petitioner be acquitted. (R. 175). Its report did not contain a synopsis of the evidence as required by the laws of the Association. (R. 25, 185). The result was that the local lodge voted to acquit petitioner. (R. 176).

The complaining member appealed the action of the local lodge to the International President of the Association, Mr. Al Hayes, pursuant to the provisions of Article K, Section 9 of the constitution of the organization which authorizes such an appeal "from the decision of any local lodge." (R. 26, 166). Petitioner opposed the appeal on the grounds that (a) the constitution of the Association did not permit an appeal from a decision of acquittal by a local lodge, and (b) the charges against him were lacking in merit. (R. 173).

The International President considered the matter and handed down a written decision in which he extensively reviewed the evidence and made detailed findings. (R. 174). These included, *inter alia*, findings (1) that the case was properly before him on appeal (R. 176); (2) that the established law of the Association had forbid membership in the Communist Party or communist activity since 1925 (R. 186, 187); (3) that the record of the proceedings before the local lodge clearly established petitioner's violation of such Association requirements (R. 175-184); and (4) that communist activity was incompatible with membership in the Association and involved support of a movement dual in purpose to the Association in violation of its laws. (R. 186).

International President Hayes therefore set aside the decision of the local lodge, found petitioner guilty, and directed his expulsion from membership in the Association (R. 188).

Petitioner then exercised his right to appeal this action to the Executive Council of the Association (R. 196). He was given an opportunity to present further evidence (R. 203), but relied upon a written brief submitted by his counsel (R. 211).[1] Petitioner did not claim before the Council that the International President had denied him any procedural rights or that he had not been given a sufficient opportunity to be heard by that officer. His argument again was primarily lack of power in the International President to entertain an appeal (R. 212, 213). On review of the case, the Executive Council affirmed the expulsion (R. 221).[2] Petitioner finally appealed the matter to the Convention of the Association, the ultimate repository of authority within the organization (R. 223). The appeal was referred to the Appeals and Grievance Committee of the Convention which, after hearing Mr. Friedman in person (R. 231), recommended that the expulsion order be affirmed (R. 228-234). This recommendation was adopted by the Convention (R. 232). Petitioner raised no claim of procedural error before the Grievance Committee nor did he complain of any failure to be heard by either the International President or the Executive Council. (R. 229, 230).

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[1] The Executive Council declined to hear oral argument on the contentions advanced by petitioner (R. 204).

[2] The Constitution of the Association prohibited the International President from participating in this decision (R. 20).

Petitioner thereafter filed his action in District Court to set aside the expulsion order. (R. 6).[3] This complaint did not allege any lack of opportunity to be heard before the International President, the Executive Council, or the Grievance Committee nor did it contain any other criticism of the procedures before these tribunals. It did allege that petitioner was not heard in person by the Convention (R. 9) although no request for such an appearance was ever addressed to that body.

The matter came on for hearing on counter motions for summary judgment (R. 84, 234). The District Court sustained the validity of the expulsion order against petitioner's principal claim that the International President of the Association could not entertain an appeal from the action of the local lodge and expel petitioner (R. 241). The Court also sustained the sufficiency of the evidence to support that order. (R. 243). The Court further rejected petitioner's claim that the laws of the Association did not prohibit Communist Party membership or activity until April 1, 1949, and that the evidence against him covered a period prior thereto (R. 243). However, the Court found that petitioner had not had full opportunity to hear and be heard in the appellate proceedings before the Association and on this ground set aside the expulsion (R. 246, 247).

The Court of Appeals agreed with the District Court's conclusions that International President

[3] Petitioner first filed suit in the District Court immediately after the action of the Executive Council asking that the expulsion order be declared invalid. This suit was dismissed on August 6, 1952, on the ground that petitioner had not exhausted his remedies within the Association. *Friedman* v. *International Association of Machinists et al.* (Civil Action No. 3367-52, U.S.D.C.D.C.)

Hayes had authority to entertain the appeal from the local lodge and expel petitioner, that there was adequate evidence on which to predicate such action (R. 262, 263), and that the laws of the Association had prohibited Communist Party membership and activity since 1925 (R. 265, 266). The Court did not agree that petitioner had not had sufficient opportunity to be heard (R. 263). It, therefore, reversed the District Court and directed that respondents' motion for summary judgment be granted (R. 267).

REASONS FOR NOT GRANTING WRIT

I

There Is No Question of Federal Law Involved

The petition raises no question involving the interpretation or application of any provision of the United States Constitution, any Federal statute, or of any regulation adopted by a Federal agency. Nor does it involve the application of any state constitution or statute. The suit is an action in equity grounded in the provisions of Title 11, Section 306 of the District of Columbia Code (1951 ed.) conferring equity jurisdiction on the District Court sitting as a state tribunal for the District of Columbia. (R. 44). It is predicated primarily upon claimed violations of the governing laws of the Association. It is a type of action heard regularly by state courts throughout the country, which are not reviewed by this Court. Indeed, this Court has heretofore specifically refused to review state court decisions involving similar issues. *Simpson* v. *Grand International Brotherhood of Locomotive Engineers*, 83 W. Va. 335, 98 S.E. 596, *cert. den.* 250 U.S. 644.

Petitioner claims that notwithstanding these facts, the Court should review the present case and should reverse the well-established law relating to judicial review of disciplinary actions by trade unions because such organizations have assumed a more important place in our economy. (Pet. 12-17). This argument was advanced to both the District Court and the Court of Appeals as a reason for invalidating the Association's action and was rejected. If accepted as a basis for reviewing the Court of Appeals decision, it would open the door wide to review by this Court of the multitude of state court decisions involving union disciplinary proceedings. Moreover, petitioner's argument is based upon a concept of public policy which is erroneous. The considerations of policy involved in union discipline cases were placed in their true perspective by the Sixth Circuit in *Sanders* v. *International Association of Bridge Workers*, 235 F.2d 271 (1956). In reversing a District Court order which had invalidated a union expulsion order on the ground that it was contrary to public policy because union membership was almost an economic necessity, the Sixth Circuit stated: (page 272)

> "The expulsion and debarment of appellant Sanders for life was a valid exercise by the union of its powers under its constitution and a legal exercise of its rights under the pertinent statute. As has been well said, 'A union must have authority to discipline its members, otherwise it will have no power to bargain effectively. Expulsion of an offending member is not so much a matter of discipline as it is a matter of protection of the Union. The preservation of an organization whose constitution and by-laws are lawful, by allowing it to expel those who seek to undermine it, is a stronger basis for public policy than

> the possible inability of the resurgent member to subsequently gain employment in his present occupation.'"

Petitioner also suggests that there should be review of the Court of Appeals decision because it involves the imposition of District of Columbia local law for misconduct which took place in Missouri and that the Court of Appeals decision is based upon principles contrary to Missouri law (Pet. 20, 21).[4] This argument has reference to the right of the International President to review the evidence and set aside the action of the local lodge as contrary thereto. Both the District Court and the Court of Appeals merely followed the well established law laid down by state courts on this subject. *Infra*, page 12. Respondents know of no decision in Missouri to the contrary and petitioner has cited none.[5]

II

There Is No Conflict of Decisions

The decision of the Court of Appeals does not conflict with any decision of any other circuit or of any Federal District Court.

Petitioner argues that the Court of Appeals decision is in conflict with an order entered by the same Court

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[4] Petitioner never suggested to either the District Court or the Court of Appeals that Missouri law should be applied or, if applied, would lead to any different result.

[5] The decisions cited by petitioner deal with appellate review of judicial decisions. As applied to administrative proceedings petitioner's argument leads to the conclusion that a Federal agency could not disagree with one of its examiner's as to the weight of evidence. As applied to a union it means that the organization would be rendered helpless to enforce its laws regardless of the evidence.

on November 4, 1957, in *Teamsters* v. *Cunningham*, 41 LRRM 2044. (Pet. 21). The Court of Appeals order to which petitioner refers merely sustained a District Court injunction pending a hearing on a suit alleging violations of the constitution of the Teamsters union in various respects. It obviously has no relation to the issues involved in the present case.

Petitioner also asserts that there is a conflict between the decision of the Court of Appeals and a California state court decision in *Gonzales* v. *Association of Machinists*, 142 Calif. App. 2d 207, 298 P.2d 92 (Pet. 18), with respect to the interpretation of the union's constitution. Petitioner relied upon this decision before both the District Court and the Court of Appeals and neither court accepted it as having any applicability on the facts before them. (R. 240-249; 259-267). In the *Gonzales* case, the International President on appeal by the disciplined member sought to impose a penalty not provided for by the union's governing laws. Here those laws specifically make participation in a dual organization an expellable offense, give the International President authority to enforce the provision by expulsion, and since 1925 have provided that joining or encouraging the Communist Party constitutes participation in a dual organization. (R. 264-265). Moreover, a conflict between a decision of a California intermediate state court[6] and a decision of a United States Court of Appeals

[6] The issue to which petitioner refers was not involved in the petition to the California Supreme Court for hearing and in this Court's subsequent review and decision in that case, which concerned the question of the division of jurisdiction between the National Labor Relations Board and state courts in a suit asking damage for improper expulsion. *International Association of Machinists* v. *Gonzales* (Case No. 31, decided May 26, 1958).

with respect to the interpretation of a union Constitution hardly is a basis to invoke this Court's review powers. The principle of conflicts in decisions as a basis for granting a petition for a writ of certiorari is for the purpose of securing uniformity of decision among United States Circuit Courts of Appeal. *Magnum Import Co.* v. *De Spoturno Coty*, 262 U.S. 159, 163 (1923). This Court clearly cannot undertake to resolve all conflicts of all courts in the nation particularly on such matters as interpretation of union constitutions.

III

The Decision of the Court of Appeals Is Correct

Strangely enough, nowhere does the petition allege that the decision of the Court of Appeals involves an incorrect application of existing legal principles. The reason therefore is clear.

Petitioner's basic contention that the appellate tribunals of the union could not review the action of his local lodge, no matter how much that action may have been in violation of the union's governing laws, finds no support in judicial precedent. Both the District Court and the Court of Appeals merely followed a well worn path on this issue. (R. 241, 263). *Simpson* v. *Grand International Brotherhood of Locomotive Engineers*, 83 W. Va. 355, 98 S.E. 580, *cert. den.* 250 U.S. 644; *Callahan* v. *Order of Railway Conductors*, 169 Wis. 43, 171 N.W. 653; *Reubens* v. *Weber*, 237 App. Div. 15, 290 N.Y.S. 701; *Pfoh* v. *Whitney*, 62 N.E. 2d 744; *Weinstock* v. *Ladisky*, 93 N.Y.S. 2d 85. The courts below were also clearly correct in finding that there was no limitation in the appeal provisions of the Constitution of the Association restricting appeals to only one class of cases as

suggested by petitioner and that the constitution of the organization conferred sufficient power upon the International President to order petitioner's expulsion for communist activity. (R. 242, 243, 263-265.)

The Court of Appeals also applied long established judicial precedents in considering and rejecting petitioner's contention that he was denied an adequate opportunity to hear and be heard before the appellate tribunals of the Association. The Court first noted that it should not upset the Association's management of its affairs unless the decision of the organization was inconsistent with fundamental fairness, in violation of the organization's own rules, or otherwise involved "illegal action." *Green* v. *Oberfell*, 73 App. D.C. 298, 307, 121 F. 2d 46, 55; *Davis* v. *International Alliance*, 60 Cal. App. 2d 713, 141 P. 2d 486; *Becker* v. *Calman*, 313 Mass. 625, 48 N.E. 2d 668; *Margolis* v. *Burke*, 53 N.Y.S. 2d 157, 161 (Sup. Ct.) (R. 263). The Court then considered the facts in the light of this principle and concluded that petitioner's expulsion should not be restrained (R. 263, 264). The Court pointed out that petitioner rested his case before the International President on the ground of a lack of power of such officer to entertain the appeal, that the International President made an independent analysis of the record, that petitioner had an opportunity to challenge the decision at the Presidential level and did not do so, and that he in fact subjected the decision to attack before the Executive Council and the Grievance Committee of the Association with full knowledge of its content. (R. 264). The Court of Appeals therefore believed that petitioner had received sufficient opportunity to be heard before the Association on the issues involved. (R. 267).

Petitioner does not state that these findings are contrary to established legal principles applicable to union disciplinary proceedings. What petitioner is really asking this Court to do is to undertake an unprecedented review of a lower court decision involving the interpretation and application of particular laws of a particular union and to establish new legal principles for all courts to follow in the future in reviewing union discipline cases.

Moreover, the new principles which petitioner thus seeks to establish would effectively bar every union in the country from protecting itself against communist infiltration. All that would be necessary would be for a sufficient number of communists to infiltrate a local and the union would be helpless to act. Nor is such a threat academic. The New York Supreme Court has recognized the danger to trade unions from communist infiltration to be so great as to give a union an inherent right of self protection. *Weinstock v. Ladisky*, 93 N.Y.S. 2d 85. The respondent Association would also be forced to retain in its ranks an individual with respect to which the record stands uncontradicted that he joined the Communist Party, actively participated in its work, and sought to recruit members of the union into its ranks.[7] It is respectfully submitted that the appellate tribunals of the Association had no choice but to take the action they did on the evidence before them and that they gave petitioner every reasonable opportunity to defend himself. The decision of the Court of Appeals affirming that fact is correct as to law and the result is equitable.

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[7] Petitioner seeks indirectly to avoid these facts by attacking the credibility of one witness with respect to relatively minor matters which played no part in the International President's decision. (Pet. 19)

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,

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